A large, hand-drawn capital letter 'I' in black ink, centered at the top of the page. It consists of a vertical line with a short horizontal bar at the top and a slightly longer horizontal bar at the bottom.

# EXHIBIT "I"

REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUMES  
TRIAL COURT CAUSE NO. 05-03-19,935

IN RE: ) IN THE DISTRICT COURT  
RUSSELL JAY REGER, ) HOCKLEY COUNTY, TEXAS  
PETITIONER ) 286TH JUDICIAL DISTRICT

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HEARING ON PETITION TO TAKE DEPOSITION

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On the 25th day of May, 2005, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Harold Phelan, Judge Presiding, held in Levelland, Hockley County, Texas.

Proceedings reported by computerized stenotype machine.

**COPY**

**APPEARANCES**

Mr. Russell Jay Reger  
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Pro Se Petitioner/Plaintiff  
(Via Telephone)

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**VOLUME 1**

**Hearing on Petition to Take Deposition**

**May 25, 2005**

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11:02 1 occurs in '96 cannot be the basis of a federal civil rights  
11:02 2 suit under 42 U.S.C. Section 1983. And that's because,  
11:02 3 Judge, it's well known, and I can supplement with even more  
11:02 4 case law, but it is very well known that the statute of  
11:02 5 limitations for a civil rights suit, under 1983, is two  
11:02 6 years.

11:02 7 And the Plaintiff -- the Petitioner/Plaintiff  
11:02 8 just waited way too long to serve his petition to take  
11:02 9 deposition, which he served as a lawsuit, and that's why we  
11:03 10 filed an answer and a plea to the jurisdiction.

11:03 11 Additionally, inmates like this cannot  
11:03 12 proceed in a civil rights lawsuit, they cannot proceed to  
11:03 13 attack their criminal conviction or anything that occurred  
11:03 14 with regards to their conviction until they have exhausted  
11:03 15 the habeas remedies and they have received an order that  
11:03 16 shows that the conviction has been reversed on direct  
11:03 17 appeal, expunged by executive order, or declared invalid by  
11:03 18 a state tribunal authorized to make such determination.  
11:03 19 That's Supreme Court law, *Heck versus Humphrey*.

11:03 20 And that's -- that's the -- the essence of  
11:03 21 our -- our plea to the jurisdiction, as well as any  
11:03 22 prisoner lawsuit. And the Petitioner here filed this as a  
11:03 23 lawsuit. It has got to be dismissed under our Chapter 14,  
11:03 24 which strictly --

11:03 25 THE COURT: Well, let's get to that later, --

## P R O C E E D I N G S

09:38 1  
09:38 2 THE COURT: Okay. All right. This is  
11:01 3 Cause No. 05-03-19,935, In Re: Russell Jay Reger,  
11:01 4 Petitioner.

11:01 5 Announcements, please?

11:01 6 MR. BROCATO: Yes. This is Anthony G.  
11:01 7 Brocato, Jr., assistant attorney general with the Texas  
11:01 8 Attorney General's Office, and I represent the -- the  
11:01 9 Respondent, or, actually, the Defendant, since we were  
11:01 10 served with suit, and that is going to be Defendant  
11:01 11 James K. Walker, Honorable Senior Judge.

11:01 12 THE COURT: All right.

11:01 13 MR. REGER: This is Russell J. Reger, the  
11:01 14 Petitioner, pro se.

11:01 15 THE COURT: All right. I think the first  
11:01 16 matter would be the plea to the jurisdiction. If you would  
11:01 17 like to proceed, Mr. Brocato.

11:01 18 MR. BROCATO: Thank you, Your Honor. As we  
11:01 19 pointed out in the plea to the jurisdiction, there cannot  
11:01 20 be a lawsuit on this matter because what the Petitioner, or  
11:02 21 the Plaintiff, actually, Mr. Reger, is trying to say is  
11:02 22 that he had some criminal trial in front of Defendant Judge  
11:02 23 James Walker.

11:02 24 That criminal trial was back on April the  
11:02 25 8<sup>th</sup>, 1996, through April the 12<sup>th</sup>, 1996. Something that

11:03 1 MR. BROCATO: Okay.

11:03 2 THE COURT: -- Mr. Brocato. Let Mr. Reger  
11:03 3 respond to your plea.

11:04 4 MR. BROCATO: Yes, Your Honor.

11:04 5 MR. REGER: Yes, Your Honor. I contend that  
11:04 6 this is not a lawsuit. This is a civil discovery  
11:04 7 proceeding that was enacted by the Texas Supreme Court in  
11:04 8 1999. It is clearly labeled "Depositions before Suit or to  
11:04 9 Investigate Claims". I don't know, at this time, without  
11:04 10 having answers from the deponent, which way I would be  
11:04 11 taking this into the courts.

11:04 12 But as of right now, the Court should have a  
11:04 13 copy of my Request for Court to Take Judicial Notice of  
11:04 14 Adjudicated Facts.

11:04 15 THE COURT: I do.

11:04 16 MR. REGER: And it has exhibits on there  
11:04 17 which shows a prima facie case by preponderance of the  
11:04 18 evidence that if Mr. Walker was not a state officer, then,  
11:04 19 subsequently, all conviction and proceedings that he  
11:05 20 presided over in my case are null and void.

11:05 21 And Heck v. Humphrey does not apply to  
11:05 22 people -- or to judicial officers that were outside of  
11:05 23 their jurisdiction.

11:05 24 THE COURT: Well, you are getting to the  
11:05 25 merits of your case. At this point, what I am talking

11:05 1 about is respond to the plea to the jurisdiction of the  
11:05 2 attorney general.

11:05 3 MR. REGER: Well, I -- yes, sir.

11:05 4 This Court has jurisdiction under Rule 202 of  
11:05 5 Texas Rules of Civil Procedure. The deponent and the  
11:05 6 attorney was served with a copy of the petition ten days  
11:05 7 before this hearing and everything is in order.

11:05 8 I had another motion that I filed before the  
11:06 9 Court for -- under Rule 12 of the Civil Rules of Procedure  
11:06 10 for the attorney general to show to even defend  
11:06 11 Mr. Walker --

11:06 12 THE COURT: Well, we haven't got to that  
11:06 13 either, yet.

11:06 14 MR. REGER: Yes, sir.

11:06 15 THE COURT: Let's take them one at a time.

11:06 16 All right. Mr. Brocato?

11:06 17 MR. BROCATO: Your Honor, if I may respond to  
11:06 18 the Petitioner's claim that he wants to just call this a  
11:06 19 deposition, a -- you know, a petition to take a deposition  
11:06 20 under Rule 202, Rule 202.1 says that a person may petition  
11:06 21 the court for an order authorizing the taking of a  
11:06 22 deposition under only two scenarios.

11:06 23 One of them, the Plaintiff is not claiming,  
11:06 24 which is to -- to keep some testimony of himself or  
11:06 25 witnesses, you know, for -- for a trial later. He is not



11:06 1 claiming that.

11:06 2 He is claiming that -- that Section B, to  
11:06 3 investigate a potential claim or suit. Inmates that want  
11:07 4 to talk about a potential claim have to show that they have  
11:07 5 got a claim.

11:07 6 And to say that my client, the Defendant, did  
11:07 7 something to him in his trial in 1996, nine years ago, does  
11:07 8 not give rise to a potential claim for the same reason as  
11:07 9 we said in the -- the plea to the jurisdiction. There is  
11:07 10 no civil rights lawsuit. It is time barred. The statute  
11:07 11 of limitations is two years.

11:07 12 He can never have a potential claim for suit  
11:07 13 with regards to something that occurred nine years ago. He  
11:07 14 can never have a potential claim or suit. It's time  
11:07 15 barred.

11:07 16 THE COURT: All right.

11:07 17 MR. REGER: May I respond to that?

11:07 18 THE COURT: You may.

11:07 19 MR. REGER: Up under Ex parte Seidel,  
11:07 20 39 S.W.3d 221, it's -- they hold that void judgments can be  
11:08 21 attacked at any time, they -- that they do not invest any  
11:08 22 validity in the judgment, that they do not enforce or put  
11:08 23 any -- it's a nullity from the beginning and is attended by  
11:08 24 none of the consequences of a valid judgment, is entitled  
11:08 25 to no respect whatsoever because it does not affect,

11:08 1 impair, or create legal rights.

11:08 2 THE COURT: Well, I understand that,  
11:08 3 Mr. Reger. But that wouldn't be the nature of your suit in  
11:08 4 Hockley County. That would be to set aside the judgment in  
11:08 5 Tarrant County, wouldn't it -- would it not?

11:08 6 MR. REGER: Yes, Your Honor. And what I am  
11:08 7 needing is for Mr. Walker to simply answer the questions  
11:08 8 that I pose to him so I would have a platform that I can  
11:08 9 maneuver off of after that.

11:08 10 THE COURT: Well, looking at your fax you  
11:09 11 wanted me to adjudicate, it appears that you have already  
11:09 12 got sufficient evidence to bring a suit in Tarrant County  
11:09 13 to claim that judgment was void.

11:09 14 Why do you need to come to Hockley County and  
11:09 15 take a deposition?

11:09 16 MR. REGER: Well, up under 202, the rules  
11:09 17 under investigating potential claim has to be filed in the  
11:09 18 area where the deponent resides or where his normal place  
11:09 19 of business is in.

11:09 20 THE COURT: Well, I understand that. But my  
11:09 21 question is, why do you need that if you have got all of  
11:09 22 these facts showing that there was no oath of office taken  
11:09 23 during the time period that you were tried?

11:09 24 MR. REGER: Well, up under lower appellate  
11:09 25 court rulings, Delamor v. State, In re Pazze, Espinoza

11:09 1 v. State, they say that -- their holdings are that a lack  
11:10 2 of any required oath within the Secretary of State is no  
11:10 3 proof in itself of a failure of a trial judge to take the  
11:10 4 required oaths.

11:10 5 See, and I have an admission from Mr. Walker  
11:10 6 that he did not have anything filed, and that he doesn't  
11:10 7 possess copies of what I -- what I have been asking from  
11:10 8 him.

11:10 9 What I am needing is an answer specifically  
11:10 10 that he did not take that oath after he was beat in  
11:10 11 re-election out of the 286<sup>th</sup>.

11:10 12 THE COURT: Right. Mr. Brocato?

11:10 13 MR. BROCATO: Judge, it sounds like what he  
11:10 14 is trying to tell you is something in the nature of an  
11:10 15 evidentiary hearing before a judge on a habeas corpus  
11:10 16 petition, and my understanding is Mr. Reger has a habeas  
11:10 17 corpus petition pending in the Court of Appeals for the  
11:10 18 Tarrant County area, or something of that nature.

11:10 19 THE COURT: Right. We are --

11:10 20 MR. BROCATO: I think he should follow up on  
11:10 21 that.

11:10 22 THE COURT: We are going to -- we are going  
11:10 23 to get to that when we talk about the motion -- your motion  
11:11 24 to dismiss.

11:11 25 I think that the petition or the -- petition

11:11 1 to take deposition, I think I do have jurisdiction, so I am  
11:11 2 going to deny your plea of jurisdiction. And now I will  
11:11 3 let you address your motion to dismiss.

11:11 4 MR. BROCATO: Yes, Your Honor.

11:11 5 The Petitioner chose to file this petition to  
11:11 6 take deposition, he chose to file that as a lawsuit. It  
11:11 7 has got a cause number for a lawsuit. It was served on my  
11:11 8 client, the judge, as a lawsuit. And we filed our answer,  
11:11 9 our plea to the jurisdiction, and our motion to dismiss.

11:11 10 Mr. Reger is an inmate of the Texas  
11:11 11 Department of Criminal Justice. He filed this suit as an  
11:11 12 inmate. And because of that, the legislature passed,  
11:12 13 already has in place, Chapter 14 of the Texas Civil  
11:12 14 Practice and Remedies Code, and that governs inmate  
11:12 15 litigation. It was enacted in response to the unfortunate  
11:12 16 truth that too -- far too many inmate litigation is  
11:12 17 federally frivolous.

11:12 18 Chapter 14 allows the courts to dismiss  
11:12 19 inmate claims that lack either -- you know, lack basis in  
11:12 20 law either before or after service of process.

11:12 21 Mr. Reger's lawsuit lacks an arguable basis  
11:12 22 in law because, on the face of it, he has filed it nine  
11:12 23 years after the trial that he wants to dispute, and it's  
11:12 24 barred by limitations because a civil rights lawsuit has to  
11:12 25 be filed in two years.

11:12 1 Also, of course, he has got to go and exhaust  
11:12 2 his administrative remedies. You know, the Supreme Court's  
11:12 3 opinion in *Heck versus Humphrey* is that a prison inmate  
11:13 4 can't have a Section 1983 lawsuit until he has shown that  
11:13 5 his conviction has been overturned -- overturned, which  
11:13 6 Mr. Reger hasn't shown.

11:13 7 Also, Section 14.004 requires the inmate to  
11:13 8 file an affidavit describing all previous lawsuits,  
11:13 9 describing the operative facts of each case, the case name,  
11:13 10 the cause number, and the court in which this suit was  
11:13 11 brought, the parties to a suit, and the results of the  
11:13 12 suit.

11:13 13 THE COURT: That's the one I want Mr. Reger  
11:13 14 to respond to, is 14.004.

11:13 15 What -- what is your story on that,  
11:13 16 Mr. Reger?

11:13 17 MR. REGER: Okay. Your Honor. On -- as far  
11:13 18 as Chapter 14 goes, it was enacted by legislation of  
11:13 19 June the 8<sup>th</sup> of 1995. 202 was brought into effect  
11:13 20 January 1, 1999. And I am -- you know, this -- this  
11:13 21 proceeding was made just for this, to investigate claims  
11:13 22 before bringing lawsuits so that no frivolous lawsuits are  
11:14 23 brought. That's what it was -- its whole intention was to  
11:14 24 curb that issue.

11:14 25 THE COURT: But are you -- you are telling me

11:14 1 that you are not bound by 14.004?

11:14 2 MR. REGER: The rule doesn't say anything  
11:14 3 about that inmates have to revert back and file a Chapter  
11:14 4 14 up underneath --

11:14 5 THE COURT: It says that if you file a  
11:14 6 pauper's affidavit, which you have, --

11:14 7 MR. REGER: Yes.

11:14 8 THE COURT: -- that you have to list all of  
11:14 9 the lawsuits that you have filed and give me the  
11:14 10 disposition of that.

11:14 11 MR. REGER: Okay.

11:14 12 THE COURT: Why do you think you are not  
11:14 13 bound by that?

11:14 14 MR. REGER: Well, like I said, Your Honor,  
11:14 15 the rule didn't really call for it. But as far as -- I  
11:14 16 have looked at some case law on it, and it says that if you  
11:14 17 do require me to file it, that I can go ahead and file it  
11:14 18 without you dismissing. And that is *Hughes v. Massey*, 65  
11:14 19 S.W.3d 743 and *Hicks -- Hickson v. Moya*, 926 S.W.2d 397.

11:15 20 I have already got that sketched out and I  
11:15 21 can have it in the mail tonight if you do require me to  
11:15 22 file that as a condition for me to process through with  
11:15 23 this proceeding.

11:15 24 MR. BROCATO: Well, Your Honor, that -- the  
11:15 25 law on exhaust -- of inmates, you know, filing the



11:15 1 affidavit to detail their previous lawsuits, that law was  
11:15 2 meant to allow courts to expeditiously dismiss these cases  
11:15 3 without prejudice, that would prevent him from being  
11:15 4 prejudiced because of the fact that the required affidavit  
11:15 5 is not here. So, I think the Court can, under even the  
11:15 6 case law that the Petitioner is citing the Court, I think  
11:15 7 the Court can dismiss this without prejudice.

11:15 8 And, you know, I think what the Petitioner  
11:15 9 should be telling the Court is the nature of the habeas  
11:15 10 corpus or the direct appeals, you know, what the status of  
11:16 11 that is. Because I -- on information and belief, I kind of  
11:16 12 think he is challenging all of this in another courtroom in  
11:16 13 front of -- in another type of proceeding.

11:16 14 THE COURT: Well, also, Mr. Reger, I don't  
11:16 15 see that you complied with Rule 202-F, one or two.

11:16 16 MR. REGER: 202.2?

11:16 17 THE COURT: 202.2-F, one or two, where you  
11:16 18 are supposed to name the people that have an interest  
11:16 19 adverse to you; and, I think the State of Texas would be  
11:16 20 one party that would have an interest adverse to you.

11:16 21 And also --

11:16 22 MR. REGER: Well, Your Honor, if -- at the  
11:16 23 moment, I -- like I said before, I don't anticipate to file  
11:16 24 suit against Texas.

11:17 25 THE COURT: Well, --

11:17 1 MR. REGER: I am investigating this claim up  
11:17 2 underneath James K. Walker. And on my petition, right on  
11:17 3 Page 1 --

11:17 4 THE COURT: I thought the purpose of this was  
11:17 5 to void your Tarrant County judgment.

11:17 6 MR. REGER: It is -- it is to get an  
11:17 7 affirmation that it is void. That was the whole purpose of  
11:17 8 this proceeding. But as far as -- I don't know how I can  
11:17 9 raise the claim until Mr. Walker answers those 30 questions  
11:17 10 that I have posed to him.

11:17 11 THE COURT: Anything further?

11:17 12 MR. REGER: The Rule 12 motion.

11:17 13 MR. BROCATO: There hasn't been a hearing set  
11:17 14 on any type of Rule 12 motion, Your Honor.

11:17 15 THE COURT: Well, I think that's moot anyhow,  
11:17 16 because I am going to dismiss the -- the action because of  
11:17 17 noncompliance of Section 14.004 of the Civil Practice and  
11:17 18 Remedy Code and the F -- 202.1-F -- I mean 202.2-F, one  
11:18 19 or -- one and two.

11:18 20 So, Mr. Brocato, would you get me an order?

11:18 21 MR. BROCATO: Yes, Your Honor, I will.

11:18 22 THE COURT: All right. That --

11:18 23 MR. REGER: Can I have an appeal on this,  
11:18 24 sir?

11:18 25 THE COURT: You surely may.



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MR. REGER: All right.

THE COURT: All right.

MR. REGER: Thank you, sir.

THE COURT: You're welcome.

MR. BROCATO: Thank you, Your Honor.

THE COURT: Bye.

(Proceedings adjourned)

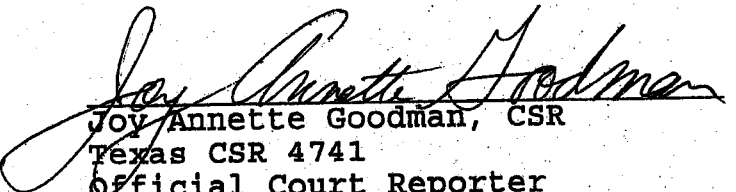
1 STATE OF TEXAS

2 COUNTY OF HOCKLEY

3  
4 I, Joy Annette Goodman, Official Court Reporter in and  
5 for the 286th District Court of Hockley County, State of  
6 Texas, do hereby certify that the above and foregoing  
7 contains a true and correct transcription of all portions  
8 of evidence and other proceedings requested in writing by  
9 counsel for the parties to be included in this volume of  
10 the Reporter's Record in the above-styled and numbered  
11 cause, all of which occurred in open court or in chambers  
12 and were reported by me.

13 I further certify that this Reporter's Record of the  
14 proceedings truly and correctly reflects the exhibits, if  
15 any, offered by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record has been waived.

18  
19   
20 Joy Annette Goodman, CSR  
21 Texas CSR 4741  
22 Official Court Reporter  
23 286th District Court  
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Expiration: 12/31/2006

J

# EXHIBIT "J"

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 02-06-104CR

|                    |   |                       |
|--------------------|---|-----------------------|
| THE STATE OF TEXAS | ) | IN THE CRIMINAL       |
| VS.                | ) | DISTRICT COURT NO. 3  |
| RUSSELL JAY REGER  | ) | TARRANT COUNTY, TEXAS |

ABATEMENT HEARING

On the 14th day of August, 2006, the following proceedings came on to be heard in the above-titled and numbered cause before the Honorable Elizabeth Berry, Judge Presiding, held in Fort Worth, Texas, reported by machine shorthand utilizing computer-aided transcription.

COPY

Judy D. Miller, CSR  
Official Court Reporter  
Criminal District Court No. 3  
Tarrant County, Texas